

**California Commission
on
Health and Safety and Workers' Compensation**

MINUTES OF MEETING

Meeting Day and Date: Thursday, June 8, 1995

Meeting Location: State Building
107 South Broadway
First Floor Auditorium, Room 1138
Los Angeles, California

Commission Members present:

Chairman Robert B. Steinberg
Commissioner James Hlawek
Commissioner Leonard McLeod
Commissioner Gerald O'Hara
Commissioner Tom Rankin
Commissioner Kristen Schwenkmeyer
Commissioner Gregory Vach

Commission Members absent:

None (One Commissioner position is currently vacant.)

Commission staff:

Christine Baker, Executive Officer of the Commission

Department of Industrial Relations representatives:

Casey L. Young, Administrative Director, Division of Workers' Compensation

Welcome and Announcements

The meeting was called to order at 10:00 am by Chairman Robert B. Steinberg.

Minutes of Meeting

June 8, 1995 Los Angeles

Adoption of Minutes

Chairman Steinberg asked for a motion regarding the minutes of the Commission meeting on May 11, 1995, which had been submitted for approval by Christine Baker. Commissioner Rankin moved that the minutes be adopted, Commissioner O'Hara seconded the motion, and the motion passed unanimously.

Change in Agenda

Having been advised that it would take approximately two hours, Chairman Steinberg rescheduled the presentation of the ERGOS Work Simulator for the afternoon.

Reports from the DWC Administrative Director

At the last Commission meeting on May 11, 1995, the Commissioners asked Executive Officer Christine Baker to request that DWC Administrative Director Casey L. Young report on the following topics:

Information Systems Development

Permanent Disability Rating Process: status of the backlogs

Status of the Permanent Disability Rating Schedule revision

Mr. Young presented the following reports on those issues.

Information Systems Development

Mr. Young began his report by stating that he wished to summarize the requirements of the mandate in the 1993 workers' compensation reform legislation for an information system. He said he was aware that he or his successor will be called up someday before the legislature or this Commission to report on the progress of the system and that he wanted to go over the provisions of Labor Code Section 138.6 again. He said that the information system is to be developed to

- assist the Department of Industrial Relations to manage the worker' compensation system in an effective and efficient manner,
- facilitate the evaluation of the efficiency and effectiveness of the benefit delivery system,

California Commission on Health and Safety and Workers' Compensation

Minutes of Meeting

June 8, 1995 Los Angeles

- assist in measuring how adequately the system indemnifies injured workers and their dependents, and
- provide statistical data for research in the specific aspects of the workers' compensation program.

Mr. Young stated that the DWC was also directed to make the system compatible with the electronic data interchange system of the International Association of Industrial Accident Boards and Commissions (IAIABC). He pointed out that this is a broad charge and therefore open to interpretation.

Mr. Young reported that DWC, with the help of its contractors over at UC Berkeley, did a lot of interviews with legislators and interest groups to find out what the expectations were and what it is they contemplate this system should produce once it's completed. There has been frustration over the years of not having adequate data when decisions are to be made on whether to do this or that on some piece of legislation.

DWC has also been working with the IAIABC for some time before the Labor Code mandate was enacted on the electronic data interchange. DWC has been encouraged to employ EDI particularly by some large claims administrators who are very frustrated with the different data reporting requirements in different states and the cost of processing paper documents. Mr. Young stated that he and his fellow administrators around the country are very frustrated with the inability to deal with all the incoming paper documents. Mr. Young said that he has been excited about the prospects of using electronic data interchange for some time and that the labor code mandate basically increases DWC's effort to bring this about.

After talking to all the interest groups and coming up with what it is that they expected and would like, DWC convened a group to go through the various data elements that were in the IAIABC EDI project and talk about what it should be collected in California. DWC wanted both data users and data producers to participate in those discussions. The data users would say 'Yes I want this data element for this reason because this is an important piece of information and this is why'. The data providers would say on the other hand 'Now wait a minute. Why do you want that? Do you know what that's going to cost to get this information?' Out of such discussions DWC was hoping to get a clear sense of what the community thought was a good business need to collect and what would or would not be a problem to collect.

Mr. Young reported that there is a lot of concern about the confidentiality of data in this system and that he was the first in line in that concern. He has been trying to battle those who want to take all of DWC's existing data and put it on CD ROM and sell it to employers so that they can know if their workers have had injuries before,

California Commission on Health and Safety and Workers' Compensation

Minutes of Meeting

June 8, 1995 Los Angeles

or sell it to lawyers looking for cases to put together on a class action basis. It's difficult because they're public records. The confidentiality aspect is not such a big deal when data is kept in paper form around the state in 27 district offices, but when data is centrally stored and can be easily manipulated in an electronic form it becomes a major issue.

When Mr. Young last reported to the Commission in February 1995, DWC was just about to embark on that project and has now completed that phase. The group has gone through those data elements and divided them into various categories to help DWC decide what is possible and what is not.

Mr. Young said that group turned out to be smaller than anticipated because many people decided just to observe rather than to participate. While this process was not as useful as he hoped it would be, it gave DWC a clue as to which data elements it should try to collect through EDI and put into this system.

DWC is in the process of going through data element by data element and trying to make definitive decisions about what it really wants to collect through the EDI; what it should collect through periodic surveys; what it is going to be able to derive from administrative data that it has internally; and come up with the framework of a system for presentation in a report to the legislature next month. Mr. Young disclosed that there is still a lot of work to do.

Mr. Young said that the Steering Committee of the IAIABC EDI Project decided at their last meeting to publish revised versions of the formats for the initial and subsequent reports in November of 1996.

Mr. Young is looking now to start this system up in 1997, which he said would give DWC plenty of time to test it and to get the bugs out. He does not want to start up with a version that is going to be out of date in a matter of months. He foresees a transition period where whatever is being collected in electronic form will also have to be collected on paper for a period of time until the environment supports the total conversion to electronic.

Mr. Young does not anticipate collecting a whole lot of data electronically. He expects to collect a core of information on each claim so that DWC will be able to pull samples and get the other information that way. The basic issues DWC will be evaluating are: the cost to do it this way or that; what kind of data quality can be expected if it is done this way or that; what's the impact on the state; what's the impact on the employer's claims administrators. There are many decisions still to be made but Mr. Young believes they are making progress. The process is a lot slower than Mr. Young thought it would be but he thinks DWC is getting there.

California Commission on Health and Safety and Workers' Compensation

Minutes of Meeting

June 8, 1995 Los Angeles

Chairman Steinberg stated that the Commission has been besieged with concerns from several areas of the workers' compensation community about this project -- where it stands and where it's going. Two principal issues have been raised; the cost of the system and especially the confidentiality of the data. Chairman Steinberg has received the impression that so many segments of the workers' compensation community seem to be so alarmed and frightened about this project, where it's going and what its cost ultimately will be. There is a question about its use and whether it's even going to be of marginal benefit to the serious issues that have to be addressed. He has gotten the sense that there is a minefield here and perhaps it's better to stand back and take a look at it to see whether this whole exercise is worth the struggle. Chairman Steinberg asked Mr. Young if the cost side of this whole project has been addressed in any way so that he has the sense of whether or not this effort is really worth it.

Mr. Young replied that he wished to address that question in two ways. First, he believes that there has been some alarmist kind of talk about what this system is going to entail. He said he had to laugh when he walked into a room at a national project meeting and someone said 'I heard what you guys are doing. You're putting together an online interactive system where you can reach into any insurance company's data base and pull out whatever you want'. Mr. Young said that he is not sure exactly what's going on. When somebody has a concern or a problem to be solved, they usually pick up the phone and call or write. But now all these concerns are swirling around everywhere and he is hearing about them from every direction than directly. Mr. Young stated that he thinks there are some other agendas going on and that he had to say that up front.

Mr. Young went on to say that there is a real issue here of cost which does get addressed. He said that the State of California would not allow any system to be developed -- especially in light of what's going on with the Department of Motor Vehicles and the Department of Social Services -- without a full cost analysis. The state requires a Feasibility Study Report (FSR)¹ which must be approved by the Office of Information Technology in the Department of Finance. When the FSR is approved, the DWC must then go through the Budget Change Proposal process to obtain funding for the information systems project. Mr. Young declared that DWC is not going to propose anything that's going to be terribly costly, especially in this environment and that this project has got to be developed in a very cost efficient way.

Chairman Steinberg asked Mr. Young about the confidentiality side of this problem.

¹ A Feasibility Study Report describes in detail the organizational need for the proposed information system, what the system will be able to do, who will use it for what purposes, what and how data will be collected and disseminated, who will get data and in what format, and what the cost of developing and maintaining the system will be, compared to the benefits expected from the system.

California Commission on Health and Safety and Workers' Compensation

Minutes of Meeting

June 8, 1995 Los Angeles

Mr. Young replied that he has serious concerns about that himself and related an incident that just happened during the week before this meeting. DWC currently has an online computer system containing information on cases that are adjudicated before the Workers' Compensation Appeals Board and DWC's Vocational Rehabilitation Unit. Mr. Young received a subpoena that asked for all the cases where the worker had certain types of cancer. He said that he asked himself and a few others in his organization what their obligation was to do somebody's research to try to put together a case. Is that why DWC collects this data? Should it be available for this purpose? Mr. Young doesn't think so but his lawyer told him that he has got to provide the data under the current law since they are public records.

Mr. Young expressed concern about the future dissemination of data since the DWC plans to collect a lot more data under this new information system. He believes that DWC needs to lock down access to the data as tightly as possible and that the data that is coming in should not be available to the people outside. He has concerns not just about confidentiality but about data quality as well. If people know that the data they have submitted is going to be used for other purposes and will be available to the public at large, what are they going to submit? Is DWC going to get what it wants? He doesn't think so. Mr. Young said this was a real issue and that he thinks it must be addressed legislatively.

Chairman Steinberg asked Mr. Young how he saw the legislature getting involved in the confidentiality issue.

Mr. Young responded that he would contemplate an exemption to the Public Records Act so that data submitted pursuant to this project would be exempt from public disclosure under that Act. Any data provided to the public for research purposes would not include individual identifiers.

Commissioner Vach asked about Mr. Young's statement that he did not have enough input on the data element phase of the information systems project. Commissioner Vach asked Mr. Young if the input he got was generally from across the spectrum of the workers' compensation community or if there were certain sections of the community that were absent in the discussion.

Mr. Young replied that the data element work group ended up basically consisting of people from DWC's staff, a few insurers, and one or two vendors. Mr. Young also noted that having the group convene in San Francisco made it difficult for those who work in the Sacramento arena during the week because they had to deal with legislative issues as well.

California Commission on Health and Safety and Workers' Compensation

Minutes of Meeting

June 8, 1995 Los Angeles

Commissioner Vach asked Mr. Young what was going to be submitted in July 1995 to the Legislature. Mr. Young said that it would be a status report on the information systems project, including a framework for the proposed system so that when people look at it they say 'okay I see. If we collect this, this is the information you're going to get. If you don't collect this you're not going to have this piece of information'. People can then make decisions about whether in fact the system is going to meet their needs.

Commissioner Vach observed that the status report may generate the input that Mr. Young is looking for. Mr. Young concurred.

Commissioner Vach noted that there are two components to the cost of the proposed system, the cost to the state and the cost to the suppliers of the data. He asked Mr. Young if he is analyzing all spectrums of the cost. Mr. Young replied affirmatively.

Commissioner Vach said that he was glad that Mr. Young suggested that there needs to be some regulation or code that provides some confidentiality for the data. Commissioner Vach pointed out that the opposite side of the confidentiality issue is the question of who regulates the regulators of this data bank. Commissioner Vach had suggested a quasi public repository for the data such that the suppliers of information would have some level of confidence is how it gets distributed and asked Mr. Young if he would have any problem with that.

Mr. Young responded that he hoped what will come out of this is a public use data bank that anybody can use. The data would be stripped of identifiers so that it can be put on the Internet or anywhere.

Commissioner Vach expressed concern there may not be a specific provision in the codes that the Legislature drafts that would preclude someone who wants to go fishing to go to the courts and say 'this wasn't covered by the regulation, therefore I can get it'. He stated that there are all kinds of potential thoughts about what will happen to this data and therefore if there's a control mechanism that is jointly shared by the suppliers and users there might be more confidence in the ability of the suppliers to say that they think they have a handle on it because it is jointly regulated or run.

Mr. Young replied that he is very concerned in this regard and that he does not want the authority to release all the data collected. He envisions providing a research data base stripped of all identifiers, such as the name of the injured worker, the claims administrator or any individual who's involved, the employer, and the carrier or administrator or self-insured employer. The data base would indicate, for instance, if there were an insurance company versus a self-insured employer, that

California Commission on Health and Safety and Workers' Compensation

Minutes of Meeting

June 8, 1995 Los Angeles

the employee was in a certain occupation, and that the employer was in a certain industry.

Commissioner Vach pointed out that if the information system contained details such as the SIC code, one could possibly start pinpointing who these people are using zip codes and other data elements. He suggested to Mr. Young that in the process of going through this information system development, if there appears to be a situation where there's going to be much conflict between who's supplying the data and who's regulating it, then give thought to employing a quasi public repository for the data. Mr. Young said he would give it some thought.

Chairman Steinberg asked Mr. Young if he had some sort of a view at the present time of the kind of system he thought was feasible in terms of the kind of information that he wanted to capture. He noted that Mr. Young had already gained a little bit of information on the extent to which the systems exist in other states. He understood that the IAIABC is the only group that has worked in this area and is a point of knowledge and information regarding these data systems. Chairman Steinberg asked where California fits in today with what has been done and how extensively has it been done in this area in other states.

Mr. Young responded that there are probably two answers to that question. The EDI project started about four or five years ago and California was really in the backwaters. The only information that DWC collected was the Doctor's First Report of Occupational Injury or Illness, the Employer's Report of Occupational Injury or Illness, and copies of Benefit Notices.

Chairman Steinberg commented that, as he understood the situation, there's really no effective way to retrieve that information.

Mr. Young concurred. He said that when he first came into the administrative director job and saw what was going on with the Benefit Notices, he asked the claims community to stop sending them since DWC couldn't do anything credible with the Benefit Notice data. That is when he started working with the IAIABC project because he saw a way to get the same information in a usable form. And so until DWC is able to receive the data electronically, he basically asked the claims community to stop wasting their money by sending in paper forms.

In terms of this project now, Mr. Young said that California is not in the lead but it is in the pack in terms of getting some information through EDI. Florida started out a lot quicker than did North Carolina, Minnesota, and Texas. Three states mandate reporting the First Report of Injury by electronic means -- Texas, Kentucky and Montana. California is moving in this direction for all the reasons people are moving to electronics rather than paper -- it's just more efficient, fewer mistakes, you don't have to redo data and so forth. Mr. Young reiterated that DIR has done a

California Commission on Health and Safety and Workers' Compensation

Minutes of Meeting

June 8, 1995 Los Angeles

pilot of electronic reporting and as soon as DWC gets through this next Feasibility Study Report, it will be able to collect First Injury Reports on a voluntary basis from anybody who wants to submit them. He reported that several claims administrators are waiting and are very anxious for DWC to do that. Mr. Young said that DWC would also like them to send a subsequent report on a voluntary basis. He expects that's the next step in the process.

Chairman Steinberg remarked that Mr. Young didn't get to clarify the status of this project and asked him about the report he planned on filing the middle of this year.

Mr. Young replied that there is a requirement in the legislation to give the legislature a status report in July on the development of the system². He said he was trying to make that as useful a document as he can. If DWC did not provide in that report the very clear sense of where it is going to the legislature and the various interest groups, he thinks they'll find themselves behind the eight-ball later on. He thinks that DWC needs to get a buy off that they're on the right track. Then after that there are a couple of other things that need to be done and are in progress now, including the Feasibility Study Report which is required in order to add any data processing kind of capabilities or systems and which is submitted through the Department of Finance.

Chairman Steinberg asked about the time line on the Feasibility Study Report. Mr. Young reported that the FSR would be completed in the fall or perhaps in the late summer of 1995. Then, if there is money required for implementation of the system, DWC needs to submit a justification called a Budget Change Proposal which goes to the Department of Finance and, if it gets through that step, it becomes the budget and then there is a discussion about that in the legislature. Those are the next steps and the opportunities for everyone to make their comments.

Permanent Disability Summary Rating Backlog

DWC administrative director Casey Young reported on the backlog of summary ratings. He stated that when he appeared before the Commission in February 1995, he reported DWC had done three things in particular to reduce the backlog of summary ratings.

The first action was to hire a group of disability evaluators and some clerical staff. Mr. Young reported that the rating capacity has increased by 25% effective in June

² Labor Code Section 138.6 provides: "The director shall issue a report on the development of the (workers' compensation information) system, and recommendations for any legislative action, no later than July 1, 1995, and shall, upon request, make the report available to the Governor, the Legislature, and the public."

California Commission on Health and Safety and Workers' Compensation

Minutes of Meeting

June 8, 1995 Los Angeles

since the new disability evaluators now are fully trained. He said that the new disability evaluators will be concentrating at least 80% of their time on these summary ratings and getting them out.

DWC also suspended disability evaluation service to the WCAB district offices during one week each month for a few months and devoted evaluator time only to processing the backlog of summary rating requests. Mr. Young said that DWC started with a backlog of about 20,000 or more, shut down the DEU for one week for three months and got the backlog reduced to about 12,000, where it has stabilized. Mr. Young stated that he was not worried about the remaining backlog at this point because DWC has increased the evaluator capacity this month.

Mr. Young explained that DWC had started a process encouraging claims administrators who had not received a summary rating from the Disability Evaluation Unit (DEU) within the statutory 20 day requirement, to self-rate the case, work out a settlement if they could, bring it in to the WCAB and have it go through the normal approval process so DWC could make better use of its evaluator time. Initially Mr. Young had reported there was a slow start up but the use of this approach has really picked up. DWC now has backlogs in Information and Assistance (I&A) offices that are reviewing these settlements. In April 1994, I&A approved about 1,600 proposed settlements, while in April 1995, approximately 4,000 were approved. Mr. Young concluded that, since about two-thirds of the proposed settlements are coming in without summary ratings, the policy seems to be having an effect.

Commissioner Vach asked Mr. Young if he were getting feedback as to the accuracy of the self ratings. Mr. Young replied that he was not getting a reading.

Commissioner Vach observed that a lot of inaccurate self ratings will cause the I & A process to back up. Mr. Young responded that he anticipated a back up in I & A because of the huge backlog in DEU, and when proposed settlements come in the backlog moves over to I & A, and then it moves over to the Workers' Compensation Judges. Mr. Young stated that this is just a backlog of work that is moving through the system and DWC is pleased to see it's moving from DEU to I & A and into the Judges because they're getting approvals.

Chairman Steinberg asked who checks the rating in those instances where the parties rate the case themselves. Mr. Young replied that two people check the rating -- first the I & A officer will look at it and obtain a DEU consultation if needed and then the Judge ultimately approves the proposed settlement.

Chairman Steinberg asked what DWC's experience was with the self ratings. Mr. Young said that he understood that that has not been a problem in terms of moving them through the system and getting the Judges to approve them through this

California Commission on Health and Safety and Workers' Compensation

Minutes of Meeting

June 8, 1995 Los Angeles

process. It's creating a backlog in other areas but it will until this original backlog is cleared out. But with what is in place, Mr. Young said he is fairly confident that by the end of the year DWC will be through this and on to much more timely ratings.

Commissioner Vach mentioned that there is either a bill or some proposal pending to enable proposed settlements from represented workers to take effect without the approval of a WC Judge. Mr. Young said when the task force met there was some sentiment for that. It would of course require a statutory change.

Mr. Young said that he was a little bit nervous about that idea and that he could see an expedited approval perhaps but he needed to be convinced.

Chairman Steinberg pointed out that there are about 140,000 lawyers the in state and all would have to be exempted. Mr. Young said that he thought it was worth looking at.

Commissioner Vach indicated to Mr. Young that he would like an update on the permanent disability summary rating backlogs in a couple of months. Mr. Young replied that he will come back to the Commission as often as the members would like him to do so.

Permanent Disability Rating Schedule (PDRS) Revision

Mr. Young reported that not a lot has happened since he last talked with the Commission in February regarding the revision of the Permanent Disability Rating Schedule (PDRS). DWC had developed a proposed revision and went on to next task of analyzing the fiscal impact of the proposed versus the current PDRS. Unfortunately, DWC had difficulty pulling a sample of cases to rate. Mr. Young said that DWC now has a sample of cases that they are going to pull and rerate to determine what the impact of the revised PDRS will be. On a trial run in Pasadena, DWC pulled about 50 cases to get the procedure down. Within the next four to six weeks, Mr. Young stated that the DEU will rate the cases and should have some results for the Commission by August 1995.

Chairman Steinberg asked what the status was on the timeline for the PDR project. Mr. Young responded that the department is way over the due date which was the first of this year. He said he was reticent though to go forward without doing the analysis of the fiscal impact. Once that step is completed, he wants to hold the public hearings as quickly as possible and get the revised PDRS adopted by the end of the year.

Minutes of Meeting

June 8, 1995 Los Angeles

The System for Compensating Permanent Disability

Chairman Steinberg commented to Mr. Young that there had been some discussion among the Commission members about going beyond the revision of the PD Rating Schedules and getting in to the broader issue of the role of the rating system in the overall workers' compensation system. He said perhaps it should be the role or function of this Commission to get in a broader examination of that whole area and asked Mr. Young for his view on that.

Mr. Young said that what DWC was trying to complete now is what he would call Phase 1 of an overall assessment of the permanent disability rating system, which he considers to be the easy part. What he believes Chairman Steinberg was referring to would be Phase 2 of such an assessment, which DWC has not taken on.

Mr. Young stated that the statute says DWC is supposed to be updating the standard ratings to reflect the current labor market³. He interpreted that to mean that the standard ratings in the permanent disability rating schedule need to be readjusted.

Mr. Young said that he believed that it was time to get on with a broader examination of permanent disability, though it would be difficult and fraught with controversy. He stated that this Commission is really the focus of where such a project ought to happen because the Commission needed to approve any changes in Standard Disability Ratings.

Mr. Young suggested that the emphasis be on redistributing the current level of permanent disability compensation. He believes that it is the Legislature's job to increase or decrease the aggregate permanent disability compensation, while it is the Commission's and the Division's job to make sure there is a tool that fairly, accurately and efficiently distributes the permanent disability compensation.

Mr. Young pointed out that a decision has to be made as to what standards are to be used to redistribute the permanent disability compensation. And to do that, a decision needs to be made as to why this compensation is provided. Mr. Young related that this is an issue that the academics talk about a lot, but once it gets into this political sphere these kinds of questions get a little mushier because the permanent disability compensation issue is so controversial and has significant

³ Labor Code Section 4660(d) provides: "On or before January 1, 1995, the administrative director shall review and revise the schedule for the determination of the percentage of permanent disabilities. The revision shall include, but not be limited to, an updating of the standard disability ratings and occupations to reflect the current labor market. However, no change in standard disability ratings shall be adopted without the approval of the Commission on Health and Safety and Workers' Compensation. A proposed revision shall be submitted to the Commission on or before July 1, 1994."

California Commission on Health and Safety and Workers' Compensation

Minutes of Meeting

June 8, 1995 Los Angeles

ramifications for everyone in the system. There are all kinds of ways to view permanent disability compensation: Is it damages for impairment or is it wage loss? Should it be readjusted so people with more wage loss (or earning capacity or functional capacity) receive more, and those with less wage loss (or earning capacity or functional capacity) receive less?

Mr. Young suggested that the Commission start with a hearing and invite the workers' compensation community to comment on how they think the permanent disability compensation should be redistributed. Where is it too much? Where is too little, given that there will not be an increase or decrease in the aggregate? Mr. Young said the Commission could get a sense of what the community feels about the issue, unless it already knows; he is not sure of that himself.

Chairman Steinberg said he was trying to reread the accounts of the legislative sessions concerning the workers' compensation reform in order to confirm the mandate of the Commission. He asked if Mr. Young agreed with his view that the Commission's mandate is fairly broad and that it can explore whatever areas it chose. Mr. Young agreed.

Commissioner Vach questioned, although the Commission might take hold of such a project and run with it, would the Commission be better served by having direction from the Legislature to do that because the issue is controversial and parties may start challenging the Commission about its actions. He said that he had a little problem with what the Industrial Medical Council did in a particular study and he would hate to see the Commission doing battles on whether it could undertake such a study and asked Mr. Young if he had any thoughts on that.

Mr. Young replied that he believes that some in the workers' compensation community are going to be excited whenever this area is discussed. He does think there clearly is a legislative mandate to update the Permanent Standard Disability Ratings to reflect the current labor market. He said that could be interpreted in a way that provides for a major revision or a minor revision. But instead of taking and assuming one or the other, Mr. Young suggested that the Commission hold the hearing, invite everybody in to the tent to make suggestions about what it is they think should be done and how they think it should be approached and take guidance from that. He does not think there is going to be a consensus on this, since it affects many people in a lot of different ways. But Mr. Young expressed his belief that a much better Permanent Disability Rating Schedule could be developed which is more accurate and efficient in providing Permanent Disability Compensation and which will be good for workers and employers alike.

California Commission on Health and Safety and Workers' Compensation

Minutes of Meeting

June 8, 1995 Los Angeles

DWC District Offices

Chairman Steinberg indicated that the Commission hears comments from the community about the efficiency of local DWC district offices and asked Mr. Young what he thought the role of the Commission should be in examining such issues. Chairman Steinberg said that he understood it was certainly within the Commission's legislative mandate to see if DWC is operating in an efficient way.

Mr. Young expressed agreement that it is within the Commission's mandate and stated that this Commission should get into anything that it hears is a problem. Mr. Young said that the Commission ought to be bringing it to DWC's attention by calling them on the carpet and doing whatever else to make sure that things are going well. He said that he would like to know about what the specific issues are since he has some history and sensitivity on complaints about local boards and what is going on with certain Judges and other staff.

Mr. Young stated that DWC has developed a proposed set of regulations with the Josephson Institute of Ethics and drafted a procedure with a committee that is somewhat attuned to what goes on with the Commission on Judicial Performance.

Commissioner Vach asked if Mr. Young were having hearings on the rules and the new guidelines. Mr. Young replied that the hearings were held during the previous week in Los Angeles and San Francisco.

Commissioner Vach asked if Mr. Young expected that the regulations will be promulgated pretty much as is. Mr. Young related that DWC will first meet with a union representative, analyze the public comments, make changes as needed, and then adopt the regulations. He does not believe the process will take very long.

Commissioner Vach asked if the peer review committee were part of the regulations or if it were something separate.

Mr. Young said there was a piece developed by the Josephson Institute of Ethics that basically took the code of judicial conduct, and added the rule guidelines commentary applicable to workers' compensation and the issues they found when they studied this issue. Then there's a specific enforcement piece which sets up a committee which includes some Judges and some people from the community to which complaints can be directed. The committee's job will be to review complaints and determine the ones that warrant some action or investigation, and then track them to make sure something gets done. DWC is trying to give the community some confidence that they have a place to go with complaints and get an answer.

California Commission on Health and Safety and Workers' Compensation

Minutes of Meeting

June 8, 1995 Los Angeles

QME Conflict of Interest Regulations

Chairman Steinberg commented to Mr. Young that they have previously discussed and have had some correspondence about the requirement for Qualified Medical Examiner (QME) conflict of interest regulations⁴. He asked Mr. Young about the status of those regulations.

Mr. Young responded that he does not have any intention of going forward with any further regulations on this unless somebody else has a good idea because he ran out. He said he did put forward a fairly controversial proposal in this area that tried to prohibit QMEs from serving if they had too much defense business or too much applicant business but was convinced through the testimony that it was really impractical. He said there was another piece of that regulation that did survive which says that if one violated the conflict of interest for reasons in the Labor Code, unlawful referrals, and things like that, then that person could not serve as a QME. Mr. Young believes that he has a regulation that has to do with conflict of interest. He said that if other people have ideas they would like to pursue in this, he would be happy to talk to them but he has not heard anything yet.

Chairman Steinberg asked Mr. Young to refresh his recollection as to how the legislature thought the process was supposed to work between the IMC, his office and the Commission. Mr. Young replied that DWC was to work in consultation with the Commission, which did not yet exist at the time this was going on. Mr. Young stated that he reported on what he had done at the first Commission meeting in July 1994 and asked if the Commission would like to do anything else and was basically told that they would let him know.

Chairman Steinberg remarked that he was under the impression that Mr. Young was working on it further and he also expected to hear something from the IMC on it. Chairman Steinberg asked what was Mr. Young's understanding of the IMC's function. Mr. Young responded that the IMC is also in a consultation role and that they consulted on the proposed regulation. Mr. Young suggested that representatives from DWC, the IMC and the Commission convene a session to see if they can come up with something.

Chairman Steinberg noted that Dr. Michael Bronshvag of the IMC was in attendance and asked if he had any comment. Dr. Bronshvag said that this was very complex issue and that the IMC was willing to sit down and work with DWC and the Commission.

⁴ Labor Code Section 139.2(o) provides: "An evaluator may not request or accept any compensation or any other thing of value from any source that does or could create a conflict with his or her duties as an evaluator under this code. The administrative director, after consultation with the (Industrial Medical) council and the Commission on Health and Safety and Workers' Compensation shall adopt regulations to implement this subdivision on or before July 1, 1994."

Minutes of Meeting

June 8, 1995 Los Angeles

Chairman Steinberg said that perhaps the Commission should report to the legislature as part of its annual report as to where we stand on the issue and asked if Mr. Young had any thoughts on that. Mr. Young responded that maybe the Commission annual report is the best way to do that and that the Legislature might provide some more guidance in this matter.

Budget Control Language

Commissioner Rankin stated that he understood that there is some budget control language that's been proposed and asked Mr. Young if he could comment on that. Mr. Young responded that the budget control language that Senator Peace suggested was supported by both sides and encouraged by the Association of California Insurance Companies (ACIC). He said that DWC did not have any problem with it. The budget control language mandates that the hearing times start at 8:30 and go until 4:30, and the only comment Mr. Young got from his staff is that the attorneys aren't going to like that. He said that DWC staff were there from 8:00 to 5:00 so whether they started at 8:30 rather than 9:00 is not a big deal as far as DWC is concerned but apparently it may to the people who appear before them. Mr. Young commented that other requirements in the budget control language have to do with a standard information system that DWC has and is improving anyway and some other data on the timeliness on hearings which DWC has anyway.

Commissioner Vach asked if DWC could stagger the scheduled hearings for 8:30, 9:30, 10:30, etc. If several hearings are scheduled for the same time, then there could be a group of people all standing in line or flooding a Judges' office and it's not very productive. Mr. Young replied that the calendaring is really the challenge of running a board, making the best use of the calendar because there is a limited amount of calendar time. The DWC complexity reduction committee is looking at that area with the community. He said he was going to try a modified master calendar in one office.

Records Retention

Commissioner Rankin remarked that he had received information from Mr. Young's office about a proposal to eliminate the requirement that records be kept for at least 25 years by replacing the statutory provisions with some kind of regulation. He expressed concern about the content of this regulation because there are interests that need to be protected.

Mr. Young responded that DWC is expending up to half a million dollars a year to store records and most of them are Compromise and Release decisions that have

California Commission on Health and Safety and Workers' Compensation

Minutes of Meeting

June 8, 1995 Los Angeles

been approved. While DWC is under a statutory provision requiring that records be kept for 25 years, most state agencies have a much more flexible provision. Mr. Young explained that DWC is asking for the authority to eliminate the 25 year requirement and have the Workers' Compensation Appeals Board establish regulations. He said that the reasoning behind that approach is that the Appeals Board is the one who really has an interest in having the records. If the records are needed, the WCAB would be able to establish rational procedures and timelines and determine the kinds of cases that would be held open. Mr. Young said that he could see putting some specific requirements in statute to keep certain kinds of cases, such as lifetime award medical cases. Mr. Young stated that it just doesn't make any sense to spend so much money particularly when DWC can't fill positions because of these kinds of costs keep creeping in the budget.

Public Comments

Chairman Steinberg asked if there were any comments from the public.

Pete McMillan from the Gary Drilling Company said that he had two concerns that he wished to address the Commission. The first question was about the Permanent Disability Rating schedule: When an injured worker's disability is being determined is any consideration being given to how it affects how he/she performs her job? The second was: Will anything be done about Qualified Medical Examiners with multiple store front operations whose names come up for panel more often?

Chairman Steinberg noted that Dr. Bronshvag was in the audience and asked for some comment from the Industrial Medical Council.

Dr. Bronshvag said if some QMEs have more than one office, they pay more than one fee. It might or might not limit the number of available QMEs. He said it was very hard to change just one thing and does not know if it would ultimately benefit the injured worker. Commissioner Vach said it is a concern and he thinks it should be looked at.

Dr. Bronshvag stated that there is a requirement that doctors should devote at least one-third of their time to practice. The IMC gets many complaints based on needs of provider and is hearing bitter complaints about down coding. He says the IMC wants to find out if it's a problem and to what extent it affects the injured worker. He said a study should be done about downcoding, upcoding and miscoding since all coding errors are equally bad. The IMC is considering a proposed study submitted by Medicode of Utah.

Chairman Steinberg asked if there were further public comments.

California Commission on Health and Safety and Workers' Compensation

Minutes of Meeting

June 8, 1995 Los Angeles

Ed Woodward, President of the California Workers' Compensation Institute, encouraged the Commission to look into compensating injured workers for permanent disability and said that the current system is inequitable, inconsistent and inadequate. Secondly, he urged the Commission to look at the cost-benefit of the proposed information system and stated that insurers believe that a positive cost/benefit could be derived from the original concept of electronic data interchange. Mr. Woodward also stated that a study of miscoding issues is long overdue.

Executive Officer's Report

Chairman Steinberg called upon Executive Officer Christine Baker to present her report on the status of the various Commission projects.

The Commission Annual Report

Ms. Baker stated that a second draft annual report dated June 2, 1995, had been sent to the Commission members and that changes which Chairman Steinberg had submitted have been included in that draft report. Other suggestions from Commissioners Vach and McLeod have policy implications and have been included in a separate packet for the Commission's review and discussion.

Ms. Baker reviewed each of those suggestions so that the Commission could decide on their inclusion prior to finalizing the report.

Executive Summary

Ms. Baker said that a suggestion was made to include an executive summary in the annual report. Pursuant to the decision at the last meeting, an executive summary has been prepared and included in the June 2 draft annual report.

Cost/Benefits of Commission's Activities

Ms. Baker reported that a suggestion was made to summarize the cost/benefits of the Commission's activities. Estimates could be made of future savings in injuries prevented and claims costs eliminated due to changes resulting from the Commission's actions. After some discussion, the Commission members determined that it would be somewhat premature to include cost/benefits since the study projects have not yet been completed and savings have yet to be realized.

Minutes of Meeting

June 8, 1995 Los Angeles

Recommendations in the Annual Report

Ms. Baker noted that the draft annual report does not make specific recommendations to the Legislature or Governor. A Commission member interpreted the legislative language as requiring the Commission to report not only on the state of the reform, but to take specific positions, presumably even if controversial. After some discussion, the Commission members determined that recommendations would be premature at this point.

Permanent Disability

Ms. Baker stated several suggestions were made concerning permanent disability.

A Commission member observed that the pending revision of the Permanent Disability Rating Schedule is not a long term solution for either promptness of rating or equity in permanent disability monies paid. A suggestion was made for the Commission to request that the Legislature direct the Commission to study the permanent disability rating system in toto. Although presumably the Commission has the authority to do this on its own, by having a mandate, the Commission can insure funding authority in the next budget cycle.

Another suggestion was made that if the current rating backlog persists, the Commission recommend that remedial programs be implemented. For example, the carriers and employers could be given the authority to contract out ratings which would have the same evidentiary weight as those from the Disability Evaluation Unit.

Another Commission member noted that the rating of permanent disability is one of the most difficult tasks of the workers' compensation system. The difficulty lies in the very process of estimating the degree of a worker's impairment and the amount of economic loss caused by such impairment. This process more often than not leads to disputes and litigation. The manner in which California rates and compensates injured workers for total and partial permanent disability has enormous impact on the adequacy of their benefits, their ability to return to gainful employment, the smooth operation of DWC's adjudication system and the cost of the workers' compensation system to employers.

A suggestion was made that the Commission explore the feasibility of conducting a study that would look at California's permanent disability benefit levels and the cost of providing those benefits in comparison to similar systems in other states. In addition, this study should examine the rating methods used in other states. It is

Minutes of Meeting

June 8, 1995 Los Angeles

clear that this issue is very complex and should be addressed carefully and systematically.

During the ensuing discussion, the Commission members determined that the Commission already has a broad mandate and does not need specific authority from the Legislature to study the issue of permanent disability. Ms. Baker explained that a Budget Change Proposal is required to obtain additional funds during the current budget year.

The High Hazard Program

The High Hazard Program has been called a major controversy with respect both to its funding and to its expected success. A suggestion was made that the Commission should study alternative programs next year for recommendations to the Legislature in the event that a solution is not reached this session.

The Commission members noted that included legislation has been proposed to change the method by which employers are assessed for the High Hazard program. Among other provisions, Senate Bill 996 requires that the department submit a report to the Legislature by January 1, 1998, addressing one or more alternative methods for funding the Cal-OSHA targeted inspection and consultation programs. The Commission annual report will include reference to the proposed legislation.

DWC Information System

Ms. Baker related a suggestion from Commissioner Vach that the Commission recommend that the mandate for the information system be modified to set an independent agency to be the repository for and administrator of the data elements. The mandate should also include a specific appeal mechanism for an affected party to petition an appropriate court or agency should it be aggrieved by the final rules of the AD in setting up the system. This is necessary because of the potentially devastating financial impact of a wholly new data system that is intended to last decades.

The Commission members concluded that the development of the DWC information system was in its very early stages and that the status report to be submitted to the Legislature by the DWC administrative director would stimulate further discussion by interested parties. The Commission annual report will include a summary of the administrative director's reports to the Commission, including his status update of the project presented at this meeting.

Minutes of Meeting

June 8, 1995 Los Angeles

Funding for the Commission

A suggestion was made that the Commission's funding issue be more specifically addressed. Although it is possible that a legislative solution will be achieved by the time the report is due, this is a problem that only the Legislature can resolve and it ought to be the Commission's position that if the Commission is to achieve its mandate, that funding is critical.

Ms. Baker said that another Commission member recommended that the Commission should try to seek a stable source of funding, because, without adequate funding, the Commission's efforts to improve the system are useless.

Commissioner Rankin reported that there had been efforts in the Legislature to establish a basic budget level of, say, \$750,000 for the Commission. If the amount of audit penalties collected does not reach that level, then another funding source would be used to supplement the collections to reach the basic established level. At first, the Targeted Inspection Assessment was suggested as the supplemental funding source, but that was not well received. The workers' compensation "user funding" assessment is now being considered, and if agreement is reached, it could be placed into a proposed bill during this legislative session.

Commissioner Rankin expressed the opinion that the problem of stable funding for the Commission should be mentioned in the annual report. He said that when he was serving as Chairman, he experienced difficulty with the Department of Finance. DOF would argue that the Commission could not have the permanent staff positions it needs because there it has no stable funding source. Commissioner Rankin stated that he thought the Legislature should know that this situation hampers the Commission's operation and basically forces it to contract everything out which may not be the best way of doing things. The Commission members concurred.

Injury Prevention programs

Ms. Baker related that one Commission member suggested that the Commission focus on injury prevention programs. Preventing injuries from occurring translates into tremendous cost savings for both the employee and employer.

After discussion, the Commission members determined that this was an area that the Commission intends to look at in the future and this intention will be stated in the annual report.

California Commission on Health and Safety and Workers' Compensation

Minutes of Meeting

June 8, 1995 Los Angeles

Return-to-work programs

One Commission member recommended that the Commission review workers' compensation Return to Work programs in the public sector. During his tenure in state service and in his personnel dealings with the system, the Commission member has observed that the return to work system is not functioning in the manner in which it was designed. Return to Work programs are not consistent or applied equally, personnel are changed frequently, and most do not appear to have received adequate training in the many complex issues on which they are required to make decisions. He has found that Return to Work personnel are often put into positions of following the law or doing what they are instructed to do by their supervisors who may also be ill informed. As large as the state system is, the Commission member feels that a review by the Commission is in order.

After discussion, the Commission members determined that this was an area that the Commission intends to look at in the future and this intention will be stated in the annual report.

Levels of benefits vis-a-vis savings in the Workers' Compensation system

Commissioner McLeod has observed that during the 1993 reforms, labor was promised incentives for movement on certain issues, given the amount of savings realized by the '93 reforms. He does not feel that labor has received a fair portion of what was promised. If in the future labor is going to be asked to support issues which impact their membership in a negative way, labor needs to be guaranteed increases in benefits that will help the majority of their membership. The increases do not have to be limited to the area of workers' compensation, they may be in the form of employer health plans which provide higher benefits at a lower cost.

After discussion, the Commission members determined that this was an area that the Commission intends to look at in the future and this intention will be stated in the annual report.

WCAB District Office Performance

One Commission member noted that the performance of the WCAB at the local boards is criticized universally. The Commission acknowledges the efforts of the administrative director to rectify the problem but it has no specific assurance that the problems will be resolved in the near future given the historic complaints. The suggestion was made, inasmuch as this is such a crucial portion of the overall workers' compensation administrative scheme, that the Commission recommend

California Commission on Health and Safety and Workers' Compensation

Minutes of Meeting

June 8, 1995 Los Angeles

that the Legislature consider specific changes to enhance the performance of the judicial function. The Commission member also observed that, if the Legislature wishes the Commission to tackle the issue, we would probably need a directive. Although the Commission's mandates are broad, it is possible that it could be challenged if such a potentially confrontational issue were studied.

Another Commission member recommends that the Commission focus on the delays in the workers' compensation process and its effects on the injured worker. While previous legislation has helped to accelerate this process, there are still areas such as the length of time it takes to get a hearing date and, once a settlement is reached, the length of time it takes to receive what was settled upon as in the case of compromise and release agreements.

After discussion, the Commission members determined that this was an area that the Commission intends to look at in the future and this intention will be stated in the annual report.

Commission Meeting Schedule

The Commission members discussed the schedule of meetings for the remainder of 1995 and decided that there would be no meetings in July, August and December, that the September and November meetings will be held in San Francisco, and that the October meeting will be held in San Diego. The annual report will reflect this revised schedule.

The Commission's Grant Program

Ms. Baker reported that all nine of the newly issued grant contracts have been signed. Eight of the grantees have already received their first payment of one-half of the amount awarded. The first Quarterly Financial Reports were due on March 31, 1995.

The reproduction of grant products, including written materials and videos, has been completed for the Grant Library. These products are currently being mailed to all persons who have requested them. The original backlog of 551 requests for Grant Library materials has been reduced to 187. Considering the turn around time of available products, the Commission staff expects the backlog to be completely eliminated this month. Ms. Baker said that the Commission continues to receive requests for Grant Library catalogues and products.

California Commission on Health and Safety and Workers' Compensation

Minutes of Meeting

June 8, 1995 Los Angeles

Information Services to Injured Workers Study

Ms. Baker reported that she met in May with UC Berkeley's Labor Occupational Health Program and the DIR data processing staff to discuss the method for extracting injured worker data for the study. The contract has been amended to add \$6,631 to include the contacting and selection of injured workers for the study. She said that meetings with Information and Assistance Officers are taking place this week in Southern California.

The Vocational Rehabilitation project

Ms. Baker stated that the Commission has finalized the process of contracting with the University of California for this project. The commission staff is preparing for the first advisory committee meeting tentatively scheduled for July.

Impact of the elimination of the Minimum Rate Law on Loss Control Services

Ms. Baker informed the Commission members that the contract for the study on Loss Control Services is in the process of being finalized and that Commission staff are preparing for the first advisory meeting to take place in July.

The Medical-Legal Study

Ms. Baker reported that she met with Dave Bellusci of the WCIRB and Frank Neuhauser of UC Berkeley again this month to finalize the Memo of Understanding for the Medical-Legal Study. This document has been submitted to the Chairman for signature.

Workers' Compensation Programs in Other States

Ms. Baker said that Commission staff are planning for the symposium as outlined in last month's meeting. She has made contact with several specialists and there seems to be a lot of interest. The symposium is tentatively planned for April 1996. The Commission staff are currently exploring hotel conference facilities in San Francisco.

Minutes of Meeting

June 8, 1995 Los Angeles

ERGOS Work Simulator

Chairman Steinberg called upon Mark Dakos from Work Recovery Inc. to talk about a product called the ERGOS Work Simulator, which is designed to aid in the assessment of an individual's performance on specific physical tasks and is used to determine physical deficiencies subsequent to an injury.

Mr. Dakos announced that the ERGOS Work Simulator was set up in a hearing room in the DWC district office on the fourth floor and that a one-hour demonstration would be performed.

Noting that it was 12:30 pm, Chairman Steinberg suggested that a lunch break be called, and that the meeting resume at 1:15 pm in the hearing room for the demonstration.

After the lunch break, the ERGOS demonstration was held in the hearing room and after the demonstration, the meeting reconvened in the first floor auditorium. Mr. Dakos continued with his verbal presentation of the ERGOS system. Chairman Steinberg noted that several Commission members had travel commitments and there would probably not be sufficient time for Mr. Dakos to complete his presentation. Chairman Steinberg directed that Mr. Dakos' presentation be incorporated as part of the meeting minutes.

Mr. Dakos stated that he wanted an endorsement to move toward an objective measurement of disability.

Future Meetings

The next meeting of the Commission will be held at 10 am on Thursday, September 14, 1995, in room 1154 on the first floor of the San Francisco State Building located at 455 Golden Gate Avenue.

Adjournment

A motion to adjourn the meeting was made by Commissioner McLeod, seconded by Commissioner Vach and passed unanimously. The meeting was adjourned at 3:06 pm by Chairman Robert B. Steinberg.

California Commission on Health and Safety and Workers' Compensation

Minutes of Meeting

June 8, 1995 Los Angeles

Attachment: Meeting Agenda
ERGOS Presentation

Approved:

Respectfully submitted,

Christine Baker for Robert B. Steinberg
Robert B. Steinberg, Chairman 9/24/95 Date

Christine Baker
Christine Baker, Executive Officer